

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of: )  
 )  
 Emmanouil Domazakis )  
 )  
 Serial No. 10/557,813 )  
 )  
 Corresponding to International )  
 Application No. PCT/GR/2004/000034 )  
 )  
 International Filing Date: 18 June 2004 )  
 )  
 Priority Date: 14 October 2003 )  
 )  
 METHOD OF PRODUCTION OF )  
 CROISSANT TYPE PASTRY PRODUCTS )  
 WITH CHARCUTERIE AND CRÈME )  
 CHEESE FILLING, AND WITH )  
 INCORPORATION OF OLIVE OIL )  
 INTO THE DOUGH )

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3 AUG 2006

Legal Staff  
 International Division

Attorney Docket: CFAV-6

**RESPONSE TO DECISION ON PETITION UNDER 37 CFR 1.137(a)**

**MAILED JULY 17, 2006**

Mail Stop PCT  
 Commissioner for Patents  
 Office of PCT Legal Administration  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

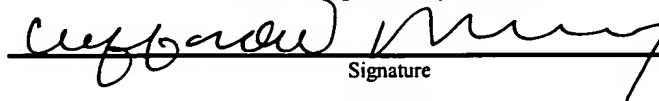
Sir:

In response to the Decision on Petition Under 37 CFR 1.137(a) mailed July 17, 2006, Applicant hereby submits a Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(a).

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 29, 2006.

Clifford W. Browning

Name of Registered Representative



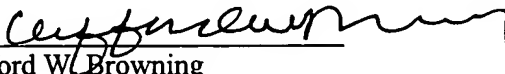
Signature

July 25, 2006

Date of Signature

Applicant also attaches herewith a copy of the Decision on Petition Under 37 CFR 1.137(a) mailed July 17, 2006 and a Credit Card Payment Form authorizing the payment of the \$750.00 small entity fee therefore. No extensions of time are believed to be necessary, but if any are deemed to be due, please charge the fees therefore to Deposit Account 12-2424.

Respectfully submitted:

By   
Clifford W. Browning  
Reg. No. 32,201  
Krieg DeVault LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204  
Telephone: (317) 636-4341  
Facsimile: (317) 636-1507

KD\_IM-719885\_1.DOC

**PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT  
DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number  
(Optional)  
CFAV-6

First Named Inventor: Emmanouil Domazakis

International (PCT) Application No.: PCT/GR2004/00034

U.S. Application No.:  
(if known) 10/577,813

Filed: April 28, 2006

Title: METHOD OF PRODUCTION OF CROISSANT TYPE PASTRY PRODUCTS WITH  
CHARCUTERIE AND CREME CHEESE FILING, AND WITH INCORPORATION OF OLIVE OIL  
INTO THE DOUGH

Attention: PCT Legal Staff  
Mail Stop PCT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

The above-identified application became abandoned as to the United States because the fees and documents required by 35 U.S.C. 371(c) were not filed prior to the expiration of the time set in 37 CFR 1.495(b) or (c) as applicable. The date of abandonment is the day after the date on which the 35 U.S.C. 371(c) requirements were due. See 37 CFR 1.495(h).

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee
- (2) Proper reply
- (3) Terminal disclaimer with disclaimer fee which is required for all international applications having an international filing date before June 8, 1995; and
- (4) Statement that the entire delay was unintentional.

## 1. Petition fee

☒ Small entity - fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status.  
See 37 CFR 1.27.

☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

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## 2. Proper reply

A. The proper reply (the missing 35 U.S.C. 371(c) requirement(s)) in the form of  
Transmittal Letter to the United States Elected Office (identify type of reply):  
as mailed on April 28, 2006

☒ has been filed previously on April 28, 2006
☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

### 3. Terminal disclaimer with disclaimer fee

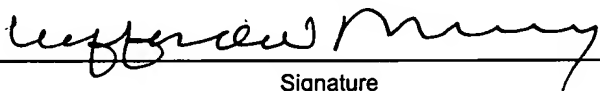
☒ Since this international application has an international filing date on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. Statement. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

### WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

 _____ Signature	July 25, 2006 _____ Date
Clifford W. Browning _____ Typed or Printed Name	32,201 _____ Registration Number, if applicable
Krieg DeVault LLP _____ Address	(317) 636-4341 _____ Telephone Number
One Indiana Square, Suite 2800, Indianapolis, Indiana 46204 _____ Address	

Enclosures: ☐ Response  
☒ Fee Payment  
☐ Terminal Disclaimer  
☒ Other (please identify): Response to Decision on Petition Under 37 CFR 1.137(a)  
 Mailed July 17, 2006; a copy of the Decision on Petition  
 Under 37 CFR 1.137(a) mailed July 17, 2006



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KRIEG DEVAULT LLP

KRIEG DEVAULT LLP  
ONE INDIANA SQUARE  
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INDIANAPOLIS IN 46204-2079

In re Application of : DECISION ON PETITION  
EMMANOUIL DOMAZAKIS :  
Application No.: 10/557,813 :  
PCT No.: PCT/GR04/00034 : UNDER 37 CFR 1.137(a)  
Int. Filing Date: 18 June 2004 :  
Priority Date: 14 October 2003 :  
Attorney Docket No.: CFAV-6 :  
For: METHOD OF PRODUCTION OF :  
CROISSANT TYPE PASTRY PRODUCTS WITH :  
CHARCUTERIE AND CREME CHEESE..... :

This is a decision on applicant's petition under 37 CFR 1.137(a) filed in the United States Patent and Trademark Office (USPTO) on 28 April 2006.

**BACKGROUND**

On 18 June 2004, applicant filed international application No. PCT/GR04/00034 which claimed a priority date of 14 October 2003, and which designated the United States. The deadline for entry into the national stage in the U.S. expired 30 months from the priority date, 14 April 2006.

On 28 April 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee for a small entity and a declaration of the sole inventor. Applicant filed the present petition requesting that the application be revived since the abandonment was unavoidable on the grounds that due to "the abrupt closing of undersigned counsel's law firm's office, the filing deadline for entry into the US National Stage of the present application did not get docketed by the undersigned counsel's present law firm until April 27, 2006." A statement of counsel accompanies the petition.

**DISCUSSION**

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay requires (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable; and (4) a terminal disclaimer pursuant to 37 CFR 1.137(c).

Regarding Item (1), the proper response was payment of the basic national fee. The fee of \$150 is sufficient for entry into the national stage. The petition fee of \$250 was paid, satisfying Item (2). As for Item (4), the terminal disclaimer is not required in this application since it was filed after 08 June 1995.

Concerning item (3), counsel states that on April 2, 2006, a violent storm severely damaged the office building in which the law firm was recently relocated. The building was

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Rpt: 9-17-2006  
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immediately closed to all tenants and the floors on which the law firm are located remain closed at the time of filing this petition. Counsel moved his practice to his present law firm on March 1, 2006. Counsel states:

the file containing the papers necessary to enter the US National Stage of the present application was not transferred by the undersigned counsel's prior law firm to his present law firm until some time thereafter. That file was being processed by the undersigned counsel's present law firm as of April 2, 2006, when the violent storm hit Indianapolis and closed the law firm's offices, but the US National Stage filing deadline associated with that file had not yet been docketed as of April 2, 2006.

Counsel does not provided sufficient evidence to conclude that the abandonment of the international application was unavoidable. Counsel has not explained why the file had not been docketed as of April 2, 2006 nor does he explain how he was able to obtain the file on April 27, 2006 when the law firm offices were still inaccessible. Furthermore, counsel has not provided any supporting evidence or documentation to support the conclusion that the events described in the petition caused him to miss the filing deadline. The burden of proof to establish that the delay from the due date for the reply until the filing of a grantable petition was unavoidable rests on the applicant. MPEP §711.03(c) II F. Thus, the petition to revive under 37 CFR 1.137(a) for unavoidable delay is dismissed without prejudice.

#### RECOMMENDATION

As an alternative, applicant may request revival of the application via petition under 37 CFR 1.137(b).

Under 37 CFR 1.137(b), a petition requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the date on which the application became abandoned. Such a petition under 37 CFR 1.137(b) must be accompanied by (1) a proper reply; (2) the petition fee required by law, and (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional", and (4) by a terminal disclaimer and fee in all applications filed before 08 June 1995 pursuant to 37 CFR 1.137(c). Currently, the petition fee required by law is \$750.00 for a small entity.

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

This recommendation to file a petition under 37 CFR 1.137(b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

#### CONCLUSION

For the reasons above, the petition to revive under 37 CFR 1.137(a) is DISMISSED without prejudice.

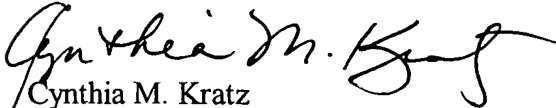
The application remains ABANDONED.

Application No.: 10/577,813

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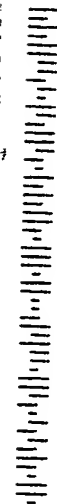
Any request for reconsideration of the merits of this petition must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)." Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

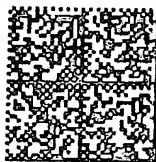


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**TO**

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